

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lloyd Daboll : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1979.

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of August, 1984, he served the within notice of Decision by certified mail upon Lloyd Daboll, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lloyd Daboll
31 Pasadena Drive
Rochester, NY 14606

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of August, 1984.

David Parchuck

James A. Haywood
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

August 9, 1984

Lloyd Daboll
31 Pasadena Drive
Rochester, NY 14606

Dear Mr. Daboll:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
LLOYD DABOLL
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Year 1979.

DECISION

Petitioner, Lloyd Daboll, 31 Pasadena Drive, Rochester, New York 14606, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1979 (File No. 36294).

A small claims hearing was held before Anthony Ciarlone, Jr., Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Room 1300, Rochester, New York, on April 24, 1984 at 9:15 A.M. Petitioner, Lloyd Daboll, appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioner's claimed theft loss deduction.

FINDINGS OF FACT

1. Petitioner herein, Lloyd Daboll, timely filed a New York State Income Tax Resident Return for the year 1979 wherein he claimed a theft loss deduction of \$7,691.00.

2. On January 22, 1982, the Audit Division issued a Notice of Deficiency to petitioner for the year 1979 asserting that additional tax of \$765.64 was due, together with interest of \$132.69, for a total allegedly due of \$898.33. The Notice of Deficiency was based on the Audit Division's disallowance of

petitioner's claimed theft loss deduction of \$7,691.00, on the ground that petitioner failed to substantiate the value of the property stolen or its cost basis.

3. On or about October 13, 1979, petitioner's residence was broken into and numerous personal items were stolen. Petitioner filed a claim for reimbursement under his homeowner's insurance policy and the following chart represents those items for which petitioner received reimbursement and the amount:

Damage to building	\$ 598.66
Less: deductible	100.00
Reimbursement for damage to building	<u>\$ 498.66</u>
Reimbursement for personal property excluding jewelry	1,967.00 ¹
Reimbursement for jewelry	500.00
Total amount reimbursed	<u><u>\$2,965.66</u></u>

Although petitioner claimed that the jewelry stolen had a value of \$8,191.00, he received an insurance reimbursement of only \$500.00 since his homeowner's insurance policy contained a provision which limited reimbursement for jewelry to a maximum of \$500.00. The theft loss of \$7,691.00, as claimed on petitioner's return, was computed in the following manner:

Deductible for damage to building	\$ 100.00
Value of jewelry stolen	8,191.00
Total loss	<u>\$8,291.00</u>
Less: insurance reimbursement for jewelry	500.00
Unreimbursed loss	<u>\$7,791.00</u>
Less: I.R.C. §165(c)(3) limitation	100.00
Claimed theft loss deduction	<u><u>\$7,691.00</u></u>

4. Petitioner attached to his perfected petition a list of all jewelry items stolen from his residence and the estimated cost of each item. Petitioner did not submit any documentary evidence to support the cost or fair market value of the stolen jewelry.

¹ With the sole exception of jewelry, petitioner received full reimbursement for all personal property stolen.

5. Included in petitioner's list of jewelry items stolen was his wife's diamond dinner ring which was valued at \$4,000.00 and his wife's matching diamond wedding band and diamond engagement ring valued at \$800.00.

6. Sometime after March 20, 1974, petitioner's wife inherited from her godmother, one Gladys E. Waugh, the diamond dinner ring referred to in Finding of Fact "5", supra. Said ring contained a two carat diamond in the middle of the ring, surrounded by twelve smaller diamonds collectively equalling a total of two carats. Petitioner has established through credible testimony that the ring was purchased by Gladys E. Waugh for a total sum of \$4,000.00.

7. The matching diamond wedding band and diamond engagement ring referred to in Finding of Fact "5", supra, were purchased in 1962 by Mrs. Daboll and her first husband. Petitioner has established through credible testimony that the matching diamond wedding band and diamond engagement ring were purchased at a total cost of \$800.00.

8. Other than establishing the cost basis of the diamond dinner ring (Finding of Fact "6", supra) and the matching wedding band and engagement ring (Finding of Fact "7", supra), petitioner has failed to submit any credible evidence to support the cost or value of the remaining pieces of jewelry.

CONCLUSIONS OF LAW

A. That section 689(e) of the Tax Law places the burden of proof on petitioner except in three specifically enumerated instances, none of which are at issue herein. Petitioner has sustained his burden of proof to substantiate that the diamond dinner ring had a cost basis of \$4,000.00 and that the matching wedding band and engagement ring had a cost basis of \$800.00. Petitioner has failed to sustain his burden of proof to substantiate the cost or value of the remaining pieces of stolen jewelry.

B. That in accordance with Conclusion of Law "A", supra, petitioner is entitled to a theft loss deduction for the year 1979 of \$4,300.00, said amount computed as follows:

Deductible for damage to building	\$ 100.00
Substantiated cost of jewelry stolen	<u>4,800.00</u>
Subtotal	\$4,900.00
Less: insurance reimbursement	<u>500.00</u>
Subtotal	\$4,400.00
Less: I.R.C. §165(c)(3) limitation	<u>100.00</u>
Allowable theft loss deduction	<u>\$4,300.00</u>

C. That the petition of Lloyd Daboll is granted to the extent indicated in Conclusions of Law "A" and "B", supra; that the Audit Division is directed to recompute the Notice of Deficiency dated January 22, 1982 consistent with the conclusions reached herein; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

AUG 09 1984

Richard A. Clu
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER